

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	02: 05cv1652
)	
ANTOINE F. CAWOG AND)	
AURORA CAWOG,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER OF COURT

August 8, 2006

Presently pending before the Court for disposition is the MOTION FOR STAY filed by Defendants, Antoine F. Cawog and Aurora Cawog, and the Response in opposition filed by the Plaintiff, United States of America.

On May 11, 2006, this Court entered Default Judgment in the above captioned case in favor of Plaintiff, United States of America, and against Defendants, Antoine F. Cawog and Aurora Cawog, in the amount of \$2,462,889.75, plus interest according to Title 28, United States Code, section 1961(c) from May 15, 2006 until paid. On May 22, 2006, Defendants filed objections to the Motion for Entry of Default Judgment, and said objections were denied by Memorandum Opinion and Order of Court issued June 15, 2006. On that same date, the Court entered an Order of Sale of the Defendants' residence and business properties.

On June 28, 2006, Defendants filed a Motion for Reconsideration, which was denied by the Court on June 30, 2006.

On July 31, 2006, Defendants filed a Notice of Appeal of the (i) Memorandum Opinion and Order of Court which denied their Objections to the Motion for Entry of Default

Judgment issued on June 15, 2006; and (ii) the Memorandum Order of Court which denied the Defendant's Motion for Reconsideration.

On that same day, Defendants filed the instant Motion to Stay the Order of Sale. Defendants contend that "[s]ince the claim of the United States is secured by the properties in question no further security is necessary." Mot. at ¶ 4. The Plaintiff has filed a Response in which it requests that the Court deny the motion or, in the alternative, if the motion should be granted, (i) to order the Cawogs to post adequate security (i.e., "a bond in the amount of \$278,000, the amount the Internal Revenue Services estimates as the combined fair market value of the properties") and/or (ii) to order the Cawogs to submit monthly sworn affidavits with proof that the properties are fully insured and that they have committed no waste against them."

On August 3, 2006, Defendants' appeal was docketed in the United States Court of Appeals for the Third Circuit at Docket No. 06-3611.

The proper vehicle for a stay of execution pending appeal is Rule 62(d) of the Federal Rules of Civil Procedure. Rule 62(d) provides:

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Fed. R. Civ. P. 62(d).

After deliberate consideration, the Court does not agree with the Defendants that "no further security is necessary" and finds that, under the circumstances of this case, it would be unfair to Plaintiff to grant a stay of execution without requiring Defendants to post a bond in the

amount of \$278,000, the amount the Internal Revenue Services estimates as the combined fair market value of the properties. Further, Defendants will be required to submit to the Court monthly sworn affidavits with proof that the properties are fully insured and that they have committed no waste against them.

The stay shall become effective when the supersedeas bond is approved by the Court.
See Fed. R. Civ. P. 62(d).

An appropriate Order follows.

McVerry, J.

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ORDER OF COURT

AND NOW, this 8th day of August, 2006, in accordance with the foregoing Memorandum Opinion, it is hereby **ORDERED, ADJUDGED, AND DECREED**, that the MOTION FOR STAY is **GRANTED** on the condition that Defendants (1) post a supersedeas bond in the amount of \$278,000, and (2) submit to the Court monthly sworn affidavits with proof that the properties are fully insured and that Defendants have committed no waste against them.

The stay shall become effective when the supersedeas bond is approved by the Court.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

cc: R. Scott Clarke,
United States Department of Justice
Email: Russell.S.Clarke@usdoj.gov

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